

BRIAN M. BOYNTON  
Principal Deputy Assistant Attorney General  
MARCIA BERMAN  
Assistant Director, Federal Programs Branch  
KATHRYN L. WYER (Utah Bar No. 9846)  
U.S. Department of Justice, Civil Division  
1100 L Street, N.W., Room 12014  
Tel. (202) 616-8475  
kathryn.wyer@usdoj.gov  
*Attorneys for Defendants*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

ISAI BALTEZAR & JULIE CHO,

Plaintiffs,  
v.

MIGUEL CARDONA, in his official  
capacity as Secretary of Education, *et al.*,

Defendants.

Case No. 5:20-cv-455-EJD

**STATEMENT OF RECENT DECISION**

Date: March 24, 2022

Time: 9:00 a.m.

Place: Courtroom 4, 5<sup>th</sup> Floor

Judge: Hon. Edward J. Davila

Pursuant to Local Civil Rule 7-3(d), Defendants file this Statement of Recent Decision regarding a recent Order issued in this District. *See* Order Granting Motion to Remand and Denying Motions for Summary Judgment as Moot, *Ctr. for Env'tl. Health v. Vilsack*, No. 18-cv-1763-RS, 2022 WL 658965 (N.D. Cal. Mar. 4, 2022) (attached). The court in *Ctr. for Env'tl. Health* granted the U.S. Department of Agriculture's motion for voluntary remand without vacatur where, similar to this case, the prior Administration had withdrawn a rule, the plaintiffs challenged the Withdrawal Rule, and the new Administration planned to start anew with a new rulemaking. *Id.* at \*1. In declining to vacate the Withdrawal Rule, the court recognized that "the law is unsettled on whether vacatur is permitted before a final judgment on the merits." *Id.* at \*4. The court also held that, even if vacatur were permitted, it was not appropriate because, under

1 the first prong of the *Allied-Signal* test—the seriousness of the Withdrawal Rule’s deficiencies—  
 2 any such deficiencies “should count for less in the pre-judgment context.” *Id.* Moreover, in  
 3 regard to the second *Allied-Signal* prong—the disruptive consequences of an interim change that  
 4 may itself be changed—the court recognized that allowing the prior rule to “immediately spring  
 5 into effect” would force regulated entities to “scramble into compliance with a temporary rule,”  
 6 and would likely force the agency to “waste administrative resources to mitigate the chaos.” *Id.*  
 7 The court’s ruling and reasoning are relevant to Defendants’ Motion for Voluntary Remand  
 8 Without Vacatur [ECF No. 48], currently pending before the Court.  
 9

10  
 11 DATED: March 14, 2022

Respectfully submitted,

12 BRIAN M. BOYNTON  
 13 Principal Deputy Assistant Attorney General

14 MARCIA BERMAN  
 15 Assistant Director, Federal Programs Branch

16 /s/ Kathryn L. Wyer  
 17 KATHRYN L. WYER (Utah Bar No. 9846)  
 18 U.S. Department of Justice, Civil Division  
 19 1100 L Street, N.W., Room 12014  
 20 Tel. (202) 616-8475  
 kathryn.wyer@usdoj.gov  
 Attorneys for Defendants